

SENATE BILL 3547

By Finney L

AN ACT to amend Tennessee Code Annotated, Title 56, Chapter 38, Part 1 and Title 68, Chapter 121, Part 1, relative amusement device and attraction safety.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 56, Chapter 38, Part 1, is amended by deleting the part in its entirety.

SECTION 2. Tennessee Code Annotated, Section 68-121-101, is amended by adding the following language as new, appropriately designated subdivisions:

() "Amusement device" means:

(1) Any mechanical or structural device that carries or conveys or permits persons to walk along, around or over a fixed or restricted route or course or within a defined area including the entrances and exits thereto, for the purpose of giving such persons amusement, pleasure, thrills or excitement. The term shall include but not be limited to roller coasters, Ferris wheels, merry-go-rounds, glasshouses, and walk-through dark houses

(2) "Amusement device" also includes:

(A) Any dry slide over twenty (20) feet in height excluding water slides; and

(B) Any portable tram, open car, or combination of open cars or wagons pulled by a tractor or other motorized device, except hay rides, those used solely for transporting patrons to and from parking areas, or those used for guided or educational tours, but which do not necessarily follow a fixed or restricted course.

(3) "Amusement device" shall not include the following:

(A) Devices operated on a river, lake, or any other natural body of water;

(B) Wavepools;

(C) Roller skating rinks;

(D) Ice skating rinks;

(E) Skateboard ramps or courses;

(R) Mechanical bulls;

(G) Buildings or concourses used in laser games;

(H) All terrain vehicles;

(I) Motorcycles;

(J) Bicycles;

(K) Mopeds;

(L) Go karts;

(M) Bungee cord or similar elastic device;

(N) An amusement device which is owned and operated by a nonprofit religious, educational or charitable institution or association, if such device is located within a building subject to inspection by the state fire marshal or by any political subdivision of the state under its building, fire, electrical and related public safety ordinances; or

(O) An amusement device which attaches to an animal so that while being ridden the path of the animal is on a fixed or restricted path.

() “Operator” means a person or the agent of a person who owns or controls, or has the duty to control, the operation of an amusement device or related electrical equipment;

() “Owner” means a person who owns, leases, controls or manages the operations of an amusement device and may include the state or any political subdivision of the state;

() “Qualified inspector” means any person who is:

(A) Found by the commissioner to possess the requisite training and experience in respect to amusement devices to perform competently the inspections required by this act;

(B) Certified by the National Association of Amusement Ride Safety Officials (NAARSO) to have and maintain at least a level-one certification; or

(C) Is a member of, and certified by, the Amusement Industry Manufacturing and Suppliers (AIMS) and meets such qualifications as are established by the board;

() “Related electrical equipment” means any electrical apparatus or wiring used in connection with amusement devices;

() “Safety rules” means the rules and regulations governing rider conduct on an amusement device pursuant to § 68-121-125;

() “Serious incident” means any single incident where any person or persons are immediately transported to a licensed off-site medical care facility for treatment of an injury as a result of being on, or the operation of, the amusement device; and

() “Serious physical injury” means a patron's personal injury immediately reported to the owner or operator as occurring on an amusement device and which results in death, dismemberment, significant disfigurement or other significant injury that requires immediate in-patient admission and twenty-four (24) hour hospitalization under the care of a licensed physician for other than medical observation.

SECTION 3. Tennessee Code Annotated, Title 68, Chapter 121, Part 1, is amended by adding the following language as new sections:

Section 68-121-116.

(a) The legislature finds that:

(1) An unsafe amusement device is likely to cause serious and preventable injuries to members of the public; and

(2) For the welfare of the people of the state, these injuries must be prevented and the public must be protected from unsafe amusement devices.

(b) The purpose of regulating amusement devices is to ensure, as far as reasonably possible, the safety of the public in the use of amusement devices in the state by providing for:

(1) Adoption of safety regulations for the owner's duty of reasonable care;

(2) An effective enforcement and compliance program;

(3) Reporting procedures on the safety of amusement devices;

and

(4) Safety provisions governing riders' use of amusement devices.

Section 68-121-117.

(a)

(1) It is an offense, punishable as provided in § 68-121-115 for:

(A) The owner of any amusement device to operate, or permit any person to operate, any amusement device, unless an annual permit has been issued by the elevator division of the department to the owner of such

amusement device, which permit shall be valid in any and all counties in the state for one (1) year from the date the permit is issued.

(B) Any person to operate an amusement device, if such person:

(i) Has knowledge that the annual permit required, pursuant to subdivision (1)(A)(i), has not been issued to the owner;

(ii) Has no authority to operate the amusement device; or

(iii) Operates the amusement device beyond the authorization given to such person by the owner.

(2) If the amusement device is not at a fixed location within this state, then the owner of such amusement device shall only be required to obtain one (1) such annual permit and the permit shall be displayed in a conspicuous location.

(b) The elevator division of the department is authorized to charge a fee to be set by the department for the issuance of an annual permit, but the department shall not issue the permit until the owner furnishes to the division proof of insurance for, and proof of inspection of such amusement device or devices by any authorized insurer, or its designated representative. Such proof of insurance shall be in an amount of not less than one million dollars (\$1,000,000) per occurrence, insuring the owner or operator against liability for bodily injury and property damage arising from the use of the amusement device.

(c)

(1) If the annual permit is issued for an individual amusement device, such permit shall be prominently displayed on the amusement device.

(2) If the annual permit is issued for amusement devices to an enterprise that has multiple amusement devices owned or managed by one (1) owner, such permit shall be filed at the main office of the site where the amusement devices are located, and shall be available for inspection by any public official during the normal business hours of such office and by members of the public during the normal business operating hours of the amusement devices.

(d) The policy or bond required by this section shall be a standardized form approved by the department and obtained from one (1) or more insurers or sureties approved by the department.

Section 68-121-118. The operator of an amusement device shall immediately cease to operate any amusement device upon which a fatality, serious physical injury or serious incident has occurred. An owner shall report any accident involving serious physical injury resulting from the operation of an amusement device to the commissioner, either orally or in writing, within twenty-four (24) hours and contact a qualified inspector from the list maintained by the commissioner pursuant to § 68-121-119. The cessation shall remain in force until an inspection has been performed by a qualified inspector and such inspector has determined that the amusement device or related equipment is safe for public use. The qualified inspector shall initiate the inspection within twenty-four (24) hours of receipt of the report of a fatality, serious

physical injury or serious incident caused by the operation of an amusement device and shall perform the inspection in a manner that proceeds with all practicable speed and minimizes the disruption of the remainder of the amusement devices at the site where such amusement device is located, as well as unrelated commercial activities. The cost of any such inspection shall be paid for by the owner of the amusement device. Such inspection may be completed immediately following the reasonable determination by a qualified inspector that a principal cause of the serious physical injury was the victim's failure to comply with the posted safety rules or with verbal instructions. In the event that a qualified inspector does not initiate an inspection within twenty-four (24) hours from the time the inspection was requested by the owner of the amusement device, the owner and operator may presume the amusement device can re-open. This does not preclude an inspection from occurring at a later date.

Section 68-121-119. The commissioner shall compile a list of persons who have been found to be qualified inspectors. Such list shall be posted on the website maintained by the department.

Section 68-121-120.

(a) A person shall not operate an amusement device unless the owner has:

(1) The amusement device inspected at least once annually by a qualified inspector, whom the owner or an insurer has provided to perform such inspection, and obtains from such qualified inspector written documentation that the inspection has been made and that the amusement device meets American Society of Testing Materials (A.S.T.M.) standards and is covered by the insurance required by § 68-121-117(b); and

(2) Obtained an annual permit as required by § 68-121-117(a)(1).

(b) The inspection required pursuant to subdivision (a)(1) shall be conducted at a minimum to meet the manufacturer's or engineer's specifications and to follow the applicable A.S.T.M. standards.

(c) The commissioner may conduct a spot inspection of any amusement device without notice at any time while such amusement device is operating or will be operating in this state. The commissioner's designee may order temporary suspension of an operating permit if it has been determined after a spot inspection that an amusement device or devices are hazardous or unsafe. Operation of such amusement device shall not resume until the hazardous or unsafe condition has been corrected and subjected to re-inspection by the commissioner for an inspection fee established by rule.

Section 68-121-121. Each owner or operator shall retain on the premises or with a traveling on portable amusement device for at least twenty-four (24) months, all maintenance, inspection and accident records for each amusement device. The owner shall make such records for the amusement device under inspection for failure or malfunction available to the commissioner or the board upon request. Such documents may be kept electronically or digitally.

Section 68-121-122. The owner or operator of traveling on portable amusement devices shall file an itinerary with the board on a form prescribed by the commissioner no less than thirty (30) days before the operation of an amusement device for use by the public.

The itinerary shall include the following:

- (1) The name of the amusement device owner;
- (2) The carnival, fair, or activity sponsor;

- (3) The address and telephone number of the site;
- (4) The dates open to the public; and
- (5) The name of the contact person on site.

Section 68-121-123. In addition to any and all other remedies, if an owner, operator or person in charge of any amusement device continues to operate any amusement device during the pendency of a cessation pursuant to § 68-121-118 or § 68-121-120, then the commissioner may petition the circuit court, in an action brought in the name of the state, for a writ of injunction to restrain the use of the alleged defective amusement device.

Section 68-121-124. The state and its officers and employees or members of the board shall not be construed to assume liability arising out of an accident involving an amusement device by reason of administration of this act.

Section 68-121-125.

(a) A rider on an amusement device shall, at a minimum:

(1) Obey the reasonable safety rules posted in accordance with subsection (g) and oral instructions for an amusement device issued by the amusement's owner or such owner's employee or agent, unless:

(A) The safety rules are contrary to those issued by the board; or

(B) The oral instructions are contrary to the safety rules;
and

(2) Refrain from acting in any manner that may cause or contribute to injuring such rider or others, including:

(A) Interfering with the safe operation of the amusement device;

(B) Not engaging any safety devices that are provided;

(C) Disconnecting or disabling a safety device except at the express instruction of the operator;

(D) Altering or enhancing the intended speed, course or direction of an amusement device;

(E) Extending arms and legs beyond the carrier or seating area except at the express direction of the amusement device operator;

(F) Throwing, dropping or expelling an object from or toward an amusement device;

(G) Getting on or off an amusement device except at the designated time and area, if any, at the direction of the amusement device operator, or in an emergency; and

(H) Unreasonably controlling the speed or direction of such rider or an amusement device that requires the rider to control or direct the rider or a device.

(b) A rider of an amusement device shall not get on, enter, or attempt to get on an amusement device unless the rider reasonably determines that, at a minimum, the rider:

(1) Has sufficient knowledge to use, get on, enter, or get off the amusement device safely without instruction or has requested and received before getting on the amusement device sufficient information to get on, use, enter, or get off safely;

(2) Has located, reviewed and understood any signs in the vicinity of the amusement device and has satisfied any posted height, medical or other restrictions and abided by all rules, regulations and restrictions;

(3) Is not under the influence of alcohol or any drug that affects the rider's ability to safely use the amusement device or obey the posted rules or oral instructions; and

(4) Is authorized by the amusement device owner or such owner's authorized servant, agent or employee to get on the amusement device.

(c)

(1) It is an offense for any person to knowingly violate any of the provisions of subsection (a) or (b).

(2) A violation of this subdivision (c)(1) is a Class C misdemeanor, punishable by a fine only.

(d) A rider, or the rider's parent or guardian on the rider's behalf, shall report in writing to the owner any injury sustained on an amusement device before leaving the owner's premises, including:

(1) The name, address, and phone number of the injured person;

(2) A full description of the incident, the injuries claimed, any treatment received, and the location, date, and time of the injury;

(3) The cause of the injury, if known; and

(4) The names, addresses, and phone numbers of any witnesses to the incident.

(e) If the rider, or the rider's parent or guardian on a rider's behalf, is unable to file a report before leaving the owner's premises because of the

severity of the rider's injuries, the rider, or the rider's parent or guardian, shall file the report as soon as reasonably possible.

(f) The failure of a rider, or the rider's parent or guardian on a rider's behalf, to report an injury under this section shall have no effect on the rider's right to commence a civil action.

(g) Safety rules governing rider conduct must be prominently displayed at or near the entrance to, or loading platform for, the amusement device.

SECTION 4. Tennessee Code Annotated, Section 68-121-102, is amended by deleting subsection (a) in its entirety and by substituting instead the following:

(a)

(1) There is created the elevator and amusement device safety board, consisting of seven (7) members appointed by the governor. The focus of five (5) members of the board shall be for elevator safety and the focus of the two (2) additional members shall be amusement device safety. The initial appointments for the two (2) members whose focus is amusement device safety shall be as follows: one (1) member shall be appointed for a term of three (3) years and one (1) member shall be appointed for a term of four (4) years. At the expiration of the respective terms of each member of the board, a successor, identifiable with the same focus as provided in this section, shall be appointed for a term of four (4) years. The term or appointment of any person who is a member of the elevator safety board on the effective date of this act shall continue until such persons' term expires and successors are appointed.

(2) Upon the death, resignation or incapacity of any member, the governor shall fill the vacancy for the remainder of the unexpired term, with a representative of the same focus as that of the member's predecessor.

(3) Of the five (5) appointed members whose focus is elevator safety, one (1) shall be a representative of the owners and lessees of elevators within this state; one (1) shall be a representative of the manufacturers of elevators used within this state; one (1) shall be a representative of an insurance company authorized to insure the operation of elevators in this state; and two (2) shall be representatives of the public at large.

(4) Of the two (2) appointed members whose focus is amusement device safety: one (1) member shall represent the interest of the Tennessee Fair Association; and one (1) member shall represent the interests of the fixed amusement device business and be NAARSO or AIMS certified. All members of the board shall be residents of this state.

(5) In making appointments to the board, the governor shall strive to ensure that at least one (1) person serving on the board is sixty (60) years of age or older and that at least one (1) person serving on the board is a member of a racial minority.

(b) Five (5) members of the board shall constitute a quorum.

(c) The members of the board shall receive no compensation for their services, but shall be reimbursed for their actual and necessary expenses incurred in the performance of their official duties in accordance with subsection (d).

(d) All reimbursement for travel expenses shall be in accordance with the provisions of the comprehensive travel regulations as promulgated by the department of finance and administration and approved by the attorney general and reporter.

(e)

(1) There is established a subcommittee whose focus shall be related to issues concerning elevator safety. The members of the subcommittee shall be

the five (5) members of the board whose focus is elevator safety. Such subcommittee shall act as an advisory committee to the board concerning elevator safety and report all findings and recommendations to the board concerning all issues related to elevators, dumbwaiters, escalators and aerial passenger tramways; provided that all final decisions concerning such actions shall be decided by the board.

(2) All issues concerning elevators, dumbwaiters, escalators and aerial passenger tramways, and amusement devices shall be heard by the commissioner or his designee which shall, pursuant to subdivision (1), report its findings and recommendations to the board for final disposition and action by the board concerning such findings and recommendations.

SECTION 5. Tennessee Code Annotated, Section 68-121-103, is amended by adding the following language to be designated as follows:

(d) The elevator and amusement device safety board shall have the following powers related to amusement device safety in addition to those related to elevators, dumbwaiters, escalators and aerial passenger tramways pursuant to subsections (a), (b) and (c):

(1) To consult with engineering authorities and organizations who are studying and developing amusement device safety standards;

(2) To adopt a code of rules and regulations governing the owner's duty of reasonable care for the installation, assembly, disassembly, repair, maintenance, use, testing, operation, and inspection of amusement devices. The board shall have the power to adopt a safety code only for those types of amusement devices defined in § 68-121-101. In promulgating the amusement device safety code the board may consider any existing or future American Society for Testing

and Materials (ASTM) safety standards affecting amusement devices, or any other nationally acceptable standard; and

(3) To make recommendations to the commissioner concerning the board's findings on safety issues related to amusement devices.

(e) Any rules or regulations adopted and promulgated shall be of a reasonable nature, and based upon generally accepted engineering standards, formulas, and practices, and insofar as is practicable and consistent with the provisions of this act, shall be uniform with the rules and regulations of other states. Such rules shall be promulgated in accordance with the uniform administrative procedures act, title 4, chapter 5.

SECTION 6. Tennessee Code Annotated, Section 68-121-104, is amended by adding the following language as a new subsection (c):

(c) The commissioner shall promulgate rules necessary to administer the provisions of this part, including rules for the reporting of any fatalities or serious physical injuries incurred from the operation of amusement devices as defined in § 68-121-101, or specifically related electrical equipment, and the subsequent inspection of such amusement devices and related electrical equipment. All such rules shall be promulgated in accordance with the uniform administrative procedures act, title 4, chapter 5.

SECTION 7 . Tennessee Code Annotated, Section 68-121-115, is amended by adding the following language as a new subsection (c):

(c) Notwithstanding the provisions of subsection (a) to the contrary, any person who knowingly makes a false statement, representation, or certification in an application, record, report, or other document filed or required to be maintained under this chapter shall be guilty of a Class A misdemeanor.

SECTION 8. For purposes of promulgating rules and regulations, this act shall act shall take effect upon becoming a law, the public welfare requiring it. For all other purposes, this act shall take effect January 1, 2009, the public welfare requiring it.